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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 39

J. R. WHEELER, *Petitioner,*
against
HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Motion for Leave to File Brief as Amici Curiae.

And Proposed Brief as Amici Curiae.

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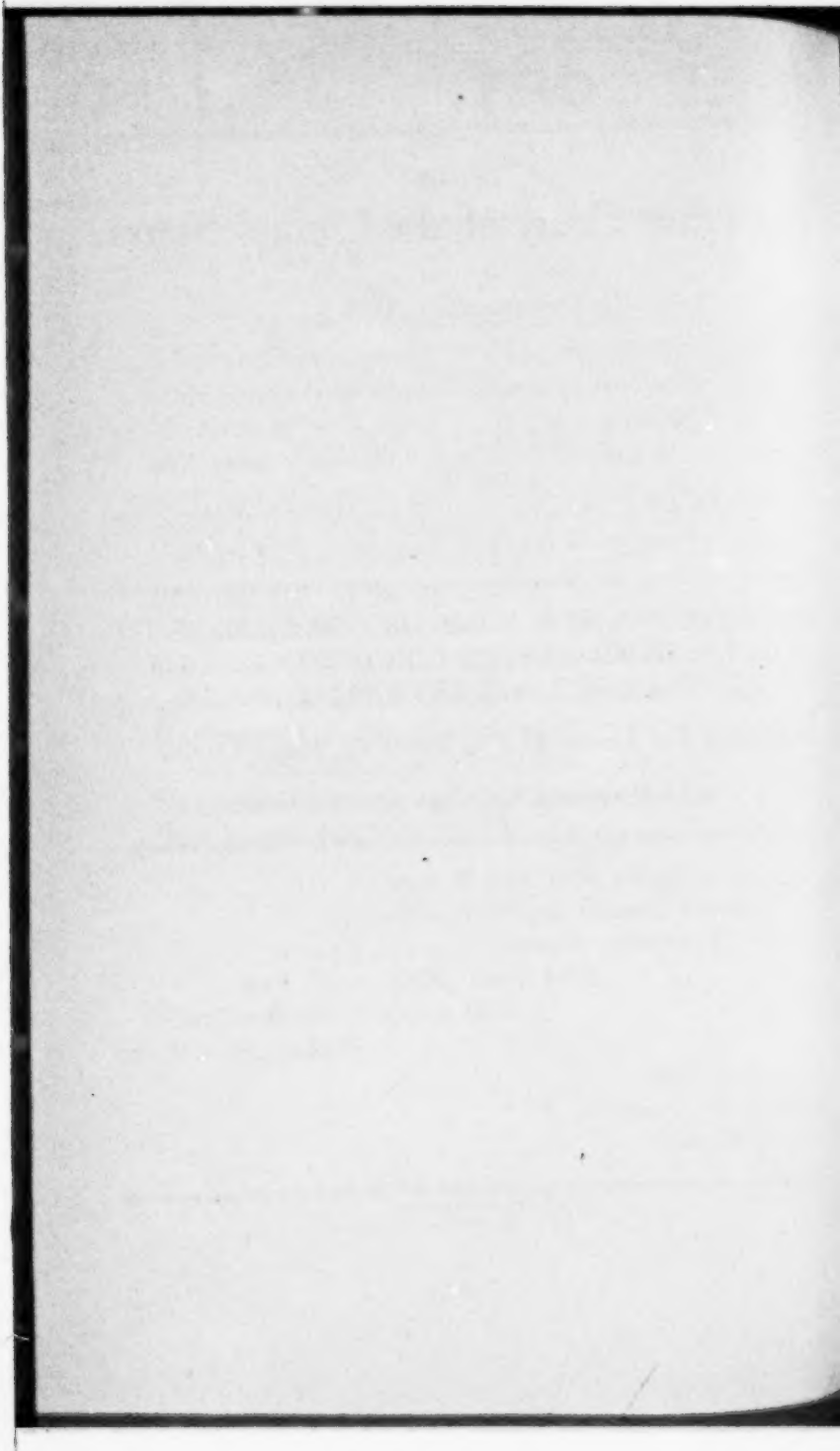

INDEX.

Cases Cited.

PAGE

Federal Land Bank of New Orleans v. Crosland, 261 U. S. 364 9

Smith v. Kansas City Title & Trust Company, 255 U. S. 180 9

Statutes Cited.

Federal Farm Loan (Act of July 17, 1916, c. 245, 39 Stat. 360; U. S. C., Title 12, ss. 641 and following) 5

National Banking Act (Rev. Stats. 5234 as amended; U. S. C. Title 12, section 192)..... 5

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J. R. WHEELER,
Petitioner,
against
HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin,
Respondent.
No. 711.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Motion for Leave to File Brief as Amici Curiae.

The undersigned, as counsel for the Stockholders' Protective Committee of the Kansas City Joint Stock Land Bank, respectfully move this Court for leave to file herein, as *amici curiae,* the annexed brief, and pray this Court to receive and consider the same and to grant the petition for certiorari in this cause, in order that the important and novel question of law which is presented by this cause, and which directly affects the interests of their clients, may be authoritatively settled by a decision of this Court.

Counsel for both the petitioner and the respondent have expressed their consent to the presentation of the annexed brief.

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Lyman M. Bass
Porter R Chandler
Of Counsel

At the request of counsel for the respondent, and as the basis for securing his consent to the presentation of the annexed brief, the undersigned desire further to state that the Stockholders Protective Committee of the Kansas City Joint Stock Land Bank is giving financial assistance in the petition for *certiorari* herein. In view of the direct and vital interest of our clients in the outcome of this case, the undersigned are very glad to make such a statement.

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LYMAN M. BASS,
PORTER R. CHANDLER,
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BRIEF AS AMICI CURIAE.

The Question Presented.

The petition in this case seeks to bring up for review a decision of the Seventh Circuit Court of Appeals (reported in 29 F. (2nd) 468), which reversed a decision of the United States District Court for the Eastern District of Wisconsin. No opinion was rendered by the District Court.

The case presents a single question of law, namely:

Can a receiver, appointed by the Federal Farm Loan Board to take charge of the assets of an insolvent Joint Stock Land Bank, bring an action to enforce the double liability imposed by law upon the stockholders of the bank?

The District Court in this case, accepting the arguments of the petitioner, held that the receiver had no power to bring such an action, that power not having been conferred upon him by statute. The Circuit Court of Appeals held that he had such power, deriving it by implication from general phrases in the Federal Farm Loan Act. (Act of July 17, 1916, c. 245, 39 Stat. 360, U. S. C. Title 12, S. 641 and following).

Statement.

In this brief, we do not seek to add to the careful exposition of the law set forth in the petitioner's brief. We desire only to indicate, as briefly as possible, the reasons why this case is of such importance that this Court should grant the petition and enable the case to be decided on the merits.

By the Federal Farm Loan Act of 1916, (U. S. C. Title 12, S. 641 and following), Congress established a system of

joint stock land banks, under Federal supervision, for the purpose of extending credit to farmers throughout the country. The name "banks" is perhaps a misnomer, as these institutions are specifically forbidden to receive deposits or to engage in ordinary banking business, their functions being practically confined to loaning money on first mortgages on agricultural land. The stock of such banks, however, bears a double liability, similar to that of other bank stocks, *i. e.* in case of insolvency the stockholders are individually liable for the debts of the bank in an amount not exceeding the par value of their stock.

There are now in existence approximately fifty such joint stock land banks, their spheres of operation covering practically every part of the country. Three of them are now insolvent and are in the hands of receivers appointed by the Federal Farm Loan Board. These three include:

(i) The Kansas City Joint Stock Land Bank of Kansas City, Missouri. This bank has been in the hands of a receiver since May, 1927, and was, at the time of the receivership, the *second largest* bank in the system, with assets and liabilities each in excess of $45,000,000.00.

This *amici curiae* brief is filed on behalf of the Stockholders Protective Committee of this bank.

(ii) The Bankers Joint Stock Land Bank of Milwaukee. This has been in the hands of a receiver since July, 1927, and had assets and liabilities each in the neighborhood of $15,000,000.00.

The case at bar arises from an attempt by the receiver of this bank to collect from a stockholder the double liability on his stock.

(iii) The Ohio Joint Stock Land Bank of Cincinnati. This bank (much smaller than the other two) has been in the hands of a receiver since September,

1927, and had assets and liabilities in the neighborhood of $1,500,000.00.

Importance of This Case.

The Federal Farm Loan Act gives certain enumerated powers to the receiver of an insolvent joint stock land bank, who is appointed by the Federal Farm Loan Board and not by the Court. These powers are copied almost *verbatim* from the powers given to the receiver of a national bank (who is appointed by the Comptroller of the Currency) by U. S. C. Title 12, S. 192, *with the significant and deliberate omission* of the power to enforce the double liability of the stockholders. The receiver of a national bank is specifically given that power by U. S. C. Title 12, S. 192; but the Federal Farm Loan Act is wholly silent on the subject as regards the receiver of a joint stock land bank.

The powers of a receiver of an insolvent joint stock land bank are set forth in Section 29 of the Federal Farm Loan Act (Act of July 17, 1916, c. 245, 39 Stat. 360, 381) now embodied in U. S. C., Title 12, SS. 961 and 963. The corresponding powers of the receiver of a national bank are found in the National Banking Act, (R. S. 5234, as amended, now embodied in U. S. C. Title 12, S. 192).

A comparison of the two statutes will serve to illustrate our point.

National Banking Act (U. S. C. Title 12, S. 192)	Federal Farm Loan Act (U. S. C. Title 12, S. 961; cf. S. 963)
Such receiver, under the direction of the COMPTROLLER, shall take pos-	Such receiver, under the direction of the FEDERAL FARM LOAN BOARD,

session of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; *and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders.* (Italics ours).

shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, with the approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and on a like approval or order, may sell all the real and personal property of such association, on such terms as the Federal Farm Loan Board or said court shall direct.

The omission from the Federal Farm Loan Act of the power to enforce the double liability of the stockholders is, we submit, of vital importance in this case.

The question is not as to the existence of the stockholders' double liability, but as to the authority of the receiver to enforce it. The petitioner contends (and the District Court accepted his contention) that this double liability can only be enforced by the established machinery of a court of equity, through a creditors' bill or some similar procedure, and can *not* be enforced by a receiver appointed by the Farm Loan Board.

The distinction is, of course, important. The existence of a debt may be admitted; but in case of dispute, the debtor

is none the less entitled to know whom he is bound to pay, and when and how payment is to be made. If the receiver should collect the assessment and it should afterwards be held by the courts that he had no right to receive it, it is at least doubtful whether the unfortunate stockholders might not be forced to pay their assessments all over again in a suit on a creditors' bill.

But this is not the only practical distinction. If the stockholders' double liability is assessed and collected through the recognized medium of a creditors' bill, the stockholder has his day in court and can be heard on the two vital questions: (a) whether or not there should be any assessment at all; and (b) what the amount of that assessment should be. If the assessment, on the other hand, is made by the Farm Loan Board, through its receiver, the stockholder has no day in court at all. The *fiat* of the receiver is conclusive both as to the necessity for an assessment and as to its amount.

The power to levy such an assessment involves the highest degree of trust and the most careful exercise of discretion. A court of equity, on a creditors' bill, hears and considers evidence as to the value of the assets, the amount of the liabilities, and the extent of the deficit. The Board's receiver, on the other hand, (assuming that he has the power to levy assessments), is not required to consider any evidence at all. If he does, the weight and sufficiency of such evidence lie apparently within his uncontrolled discretion.

We submit, therefore, that Congress acted with full knowledge and deliberation when it omitted to give this power in specific terms to the Board's receiver. That omission, we believe, clearly shows that Congress desired

to give the stockholder his day in court according to the well-established and well-understood procedure of a creditors' bill. The opposing argument must of necessity be based (as was the decision of the Circuit Court of Appeals in this case) only on inferences and implications. It is inconceivable that this important power, so noticeably absent from the specific language of the Act, should be held to have been conferred by implication only.

What has just been said will serve to indicate a few of the more important questions raised by this case. Every one of the stockholders of the three banks now in receivership has a direct and vital interest in these questions. The receiver of the Milwaukee bank, as shown by the record and petition herein, has declared and is now seeking to collect a 100% assessment from each of 488 stockholders. The receiver of the Kansas City bank has not yet declared an assessment, but claims the power to declare and enforce it, and may attempt to exercise that power at any time. *When such an assessment is declared, it will affect more than 1800 stockholders scattered through 35 states,* with holdings, liable to assessment, having a par value of $3,800,000.00.

Each of these 1800 stockholders, in the present state of the law, would be justified in refusing to pay his assessment to the receiver until the latter had established, by judicial proceedings, his right to demand and receive it. Many of them, conceivably, would so refuse. The result would be expensive and protracted litigation in circuit after circuit, very probably ending in a conflict between Courts which could ultimately be resolved only by *certiorari* from this Court. The probability of such a conflict is indicated by the divergent views of the District Court and the Circuit Court of Appeals in the case at bar.

The Court Should Grant Certiorari in This Case.

Under the circumstances above set forth, we respectfully submit that this Court should take the present opportunity to settle, authoritatively, this important question as to the rights of the receiver. The case is not one of mere academic interest, but is one which directly affects thousands of individuals and millions of dollars. The case is one of those where it is of the greatest importance that the law should be settled, *one way or the other*. It falls, we submit, precisely within the language of Rule 38, par. 5 b, of this Court, which indicates as one of the reasons for granting *certiorari:*

> "Where a circuit court of appeals * * * has decided an important question of federal law which has not been, but should be, settled by this Court."

The significant difference, above alluded to, between the statute applicable to *land bank* receivers and the statute applicable to *national bank* receivers, clearly renders inapplicable the previous decisions of this Court which construe the National Banking Act.

This Court has only twice passed upon any provision of the Federal Farm Loan Act; and neither of its two decisions even remotely affects the present issue. In *Smith v. Kansas City Title & Trust Co.*, 255 U. S. 180, the constitutionality of the Act was upheld. In *Federal Land Bank of New Orleans v. Crosland*, 261 U. S., 374, the Court was called upon to consider only the scope of the tax-exemption provisions of the Act. The whole problem of the extent of the powers of the Farm Loan Board in general and of its receivers in particular, has not yet been considered, and is governed by no precedents in this Court. The issue presented by this case is one which urgently requires the authoritative voice of this Court for final settlement.

Conclusion.

We therefore respectfully submit that the writ of *certiorari* should be granted in this case.

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